

Application No.: 09/835,866
Amendment

R E M A R K S

Reconsideration of the application in view of the above amendments and following remarks is respectfully requested. Claims 1, 3, 10, 13, 15, 23, 25 and 27 have been amended, claims 4, 7, 18 and 21 have been canceled without prejudice, and new claims 35 and 36 have been added. Therefore, claims 1-3, 5-6, 8-17, 19-20 and 22-36 are pending in the application.

Two Additional IDSs Filed 10/3/03 and 12/23/03

Applicant mailed a Supplemental Information Disclosure Statement (IDS) to the PTO for this application on October 3, 2003, and also electronically filed another Supplemental IDS for this application on December 23, 2003. Applicant requests that the Examiner consider the references listed in these two IDSs and return copies of the signed Forms PTO-1449 with the next paper for this application.

Extension of Time

A petition and fee for a one-month extension of time to respond is included herewith to extend the period for response to May 5, 2004.

Written Statement regarding Substance of 4/9/04 Interview per 37 CFR 1.133(b)

Applicant appreciates very much the opportunity to discuss the rejections in this application with Examiner Hanh Phan in the telephone interview that occurred on April 9, 2004, at 1:00 p.m. EST. In accordance with the requirements of 37 CFR 1.133(b), and the Manual of Patent Examining Procedure (MPEP) §713.04, Applicant provides the following written statement of the reasons presented at the interview as

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warranting favorable action.

No exhibits were shown or discussed. The claims that were discussed were independent claims 1, 3, 5, 6, 10, 13, 15, 23, 25, 27 and 29, as well as proposed new independent claims 35 and 36. The prior art that was discussed was U.S. Patent Application Publication No. 2002/0122230 A1 to Izadpanah et al. ("Izadpanah et al."), and U.S. Patent No. 6,587,687 B1 to Wiedeman ("Wiedeman").

The proposed amendments that were discussed are the same amendments that are presented above. Namely, independent claims 1, 3, 10, 13, 15, 23, 25 and 27 have been amended to insert "non-wireless", independent claims 5, 6 and 29 have not been amended, independent claim 7 has been canceled without prejudice, and independent claims 35 and 36 have been added which each include "non-wireless".

The general thrust of the Applicant's principal argument that was discussed in the interview was that the insertion of "non-wireless" in the claims overcomes the rejections because there is no motivation to modify Izadpanah et al.'s system to have a non-wireless alternate communication path. Regarding independent claims 5 and 6, there is similarly no motivation to modify Izadpanah et al.'s system to have the respectively claimed fiber and wire alternate communication path. Regarding independent claim 29, it was pointed out to the Examiner that he has simply never shown in any of the previous office actions where the "re-evaluating" step is shown in a reference. These arguments are further explained in the below remarks.

The Examiner indicated that he would discuss the amendments and arguments with his supervisor and call the undersigned back. The Examiner called the undersigned back on April 12, 2004, and indicated that Applicant should proceed to

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formally file the proposed amendments and arguments and that the Examiner would consider them after they are filed.

Claim Rejections under 35 U.S.C. § 103

Izadpanah et al. in view Wiedeman

The Examiner rejected claims 1-12, 15-26 and 31-34 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0122230 A1 to Izadpanah et al. ("Izadpanah et al.") in view of U.S. Patent No. 6,587,687 B1 to Wiedeman ("Wiedeman"). Applicant respectfully traverses these rejections.

The Examiner asserts that Izadpanah et al. discloses all of the limitations of Applicant's independent claim 1 except for the "determining" step. The Examiner further asserts that it would have been obvious to incorporate the determining step allegedly taught by Wiedeman into the system of Izadpanah et al. (See Office Action mailed 01/05/2004, page 3, lines 7-10). In other words, the Examiner asserts that it would be obvious to modify Izadpanah et al.'s system based on the teachings of Wiedeman.

Applicant has amended independent claim 1 to recite routing the network data traffic through a "non-wireless" alternate communication path. Independent claims 3, 10, 15, 23 and 25 have been amended in a similar manner. These amendments are supported by Applicant's specification and drawings as originally filed. For example, see page 7, line 24 to page 9, line 9 of Applicant's specification. In addition, Applicant's FIG. 3 illustrates that the alternate communication path may comprise the wire cable 218 or the fiber optic cable 220, which are both non-wireless communication paths.

As Applicant explained in the telephone interview of

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April 9, 2004, there would be no motivation for a person of ordinary skill in the art to modify Izadpanah et al.'s system to have a non-wireless alternate communication path as is now recited in Applicant's claim 1. This is because Izadpanah et al. teaches against such a modification, such a modification would change Izadpanah et al.'s principal of operation, and such a modification would render Izadpanah et al. unsatisfactory for its intended purpose. As such, a person of ordinary skill in the art would not find a reason to make the modifications, which means that Izadpanah et al. cannot be used to establish a *prima facie* case of obviousness of Applicant's amended independent claim 1.

Specifically, Izadpanah et al. teaches against having a non-wireless alternate communication path because the reference is clearly focused on wireless communication links. For example, the title of Izadpanah et al. includes the words "wireless communication link". Furthermore, the first sentence of Izadpanah et al. states:

"The present invention relates to broadband communication systems, and more particularly to wireless communication links within broadband networks."

(Izadpanah et al., paragraph [0001]) (emphasis added).

Izadpanah et al. additionally indicates that its system is for "areas lacking fiber infrastructure". (See Izadpanah et al., paragraph [0002]). This teaches against having a non-wireless alternate communication path because such areas could not have a fiber alternate communication path. Izadpanah et al.'s heavy emphasis on wireless communication links would clearly dissuade a person of ordinary skill in the art from modifying that system to include a non-wireless alternate communication path.

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Section 2143.01 of the Manual of Patenting Examining
Procedure (MPEP) states:

"If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious."

MPEP § 2143.01 Suggestion or Motivation To Modify the References.

Modifying Izadpanah et al.'s system to include a non-wireless alternate communication path would clearly change Izadpanah et al.'s principle of operation. This is because, again, Izadpanah et al. is clearly focused on wireless communication links. Changing from a wireless principal of operation to a non-wireless principal of operation is, to say the least, a huge change in the principal of operation, which means there would be no motivation to make such a modification.

Section 2143.01 of the MPEP states:

"If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)."

MPEP § 2143.01 Suggestion or Motivation To Modify the References.

Modifying Izadpanah et al.'s system to include a non-wireless alternate communication path would also render Izadpanah et al. unsatisfactory for its intended purpose. Namely, Izadpanah et al.'s intended purpose is for wireless communications. Modifying that system to include a non-wireless alternate communication path would render Izadpanah et al. unsatisfactory for purely wireless communications. As such, there would be no motivation to make such a

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modification.

Therefore, because a person of ordinary skill in the art would not find a reason to modify Izadpanah et al.'s system to include a non-wireless alternate communication path, Izadpanah et al. cannot be used to establish a *prima facie* case of obviousness of Applicant's amended independent claims 1, 3, 10, 15, 23 and 25, as well as Applicant's new independent claims 35 and 36. As such, the rejections must be withdrawn. Furthermore, the rejections of claims 2, 8-9, 11-12, 16-17, 19-20, 22, 24, 26 and 31-34 must be withdrawn for at least these same reasons due to their dependence on their respective independent claims.

The above reasoning also applies to Applicant's independent claims 5 and 6. Specifically, claim 5 recites that the alternate communication path comprises a "fiber optic communication path", and claim 6 recites that the alternate communication path comprises a "wire communication path". With respect to claim 5, the Examiner presumably asserts that it would be obvious to modify Izadpanah et al.'s FIG. 1(a) (which shows only wireless paths) to include a fiber optic alternate communication path using the teachings of Wiedeman's FIGS. 3 and 4. (See Office Action mailed 01/05/2004, page 4, lines 1-3). But because of the reasons already explained above, there is absolutely no motivation for a person of ordinary skill in the art to modify Izadpanah et al.'s system to include such a non-wireless alternate communication path. Moreover, the Examiner has provided no explanation whatsoever in the office action as to why there would be any such motivation.

Similarly, with respect to Applicant's claim 6, the Examiner presumably asserts that it would be obvious to modify Izadpanah et al.'s FIG. 1(a) (which shows only wireless paths)

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to include a wire alternate communication path using the teachings of Wiedeman's FIGS. 12 and 17. (See Office Action mailed 01/05/2004, page 5, lines 12-15). But again, because of the reasons already explained above, there is absolutely no motivation for a person of ordinary skill in the art to modify Izadpanah et al.'s system to include such a non-wireless alternate communication path, and the Examiner has not provided a reason as to why there would be any such motivation to change Izadpanah et al.'s system from wireless to non-wireless.

Therefore, Applicant submits that Izadpanah et al. cannot be used to establish a *prima facie* case of obviousness of Applicant's independent claims 5 and 6 and the rejections must be withdrawn. This reasoning also applies to Applicant's dependent claims 19 and 20.

As explained above, the Examiner is basing the rejections on the notion that it would be obvious to modify Izadpanah et al.'s system based on the teachings of Wiedeman, which means the Examiner is using Izadpanah et al. as the primary reference in the rejections. Applicant submits that the above claim amendments also confirm that Wiedeman cannot be used as the primary reference for establishing a *prima facie* case of obviousness of Applicant's claims. This is because, for example, Wiedeman does not appear to disclose any free-space optical links and Wiedeman's satellite system cannot have a non-wireless alternate communication path all the way to the user terminal 5, which is a wireless device. Furthermore, it would make no sense whatsoever to try to modify Wiedeman's satellite system to include a non-wireless alternate communication path to one or more of the satellites orbiting the earth. As such, a person of ordinary skill in the art would have no motivation to make such modifications, which

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means that Wiedeman cannot be used to establish a *prima facie* case of obviousness of Applicant's claims.

Therefore, in summary, Izadpanah et al. teaches against using a wireline system in any form, either as a primary or as a backup link, due to the lack of a wired infrastructure, and Wiedeman cannot connect a ground terminal to a satellite or interconnect satellites by using any kind of wireline connection.

Izadpanah et al. in view of Wiedeman and further in view of Bae

The Examiner rejected claims 13, 14 and 27-30 under 35 U.S.C. § 103(a) as being unpatentable over Izadpanah et al. in view of Wiedeman and further in view of U.S. Patent No. 5,790,286 to Bae ("Bae"). Applicant respectfully traverses these rejections.

With respect to Applicant's independent claims 13 and 27, Applicant has amended those claims in a manner similar to amended independent claim 1, i.e., to recite a "non-wireless" alternate communication path. Therefore, Applicant submits that the rejection of these claims based on Izadpanah et al. in view of Wiedeman and further in view of Bae has been overcome for the same reasons discussed above with respect to claim 1. Namely, there would be no motivation for a person of ordinary skill in the art to modify Izadpanah et al.'s system to have a non-wireless alternate communication path as is now recited in these claims. For these reasons, the rejection of claims 13 and 27, as well their dependent claims 14 and 28, must be withdrawn.

With respect to Applicant's independent claim 29, this is now the fourth time the Examiner has disregarded limitations of this claim and entered a rejection. *Specifically, As*

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Applicant explained in the telephone interview of April 9, 2004, the Examiner has simply not identified where any of the cited references disclose the step of "re-evaluating the alternate communication path selection" that is recited in claim 29. A review of the bottom of page 5 through page 6 of the present office action, where the Examiner explains the rejection of claim 29, indicates that the Examiner never mentions the "re-evaluating" step. Applicant discussed this re-evaluation feature in his specification and in his previous amendments, which remarks are again repeated and incorporated herein by this reference. Therefore, because the Examiner has disregarded this claim limitation, the rejection of claim 29 must be withdrawn for at least this reason.

Applicant submits that the rejection of claim 29, as well as claims 13 and 27, must also be withdrawn because, as Applicant has already explained in his previous responses, Bae does not establish a *prima facie* case of obviousness of Applicants's claims. Applicant's previous remarks are again repeated and incorporated herein by this reference. Specifically, the Examiner now states that "Bae teaches sending a alarm over the optical network in response to the data indicative of at least one of of the one or more environmental conditions." (Office Action mailed 01/05/2004, bottom of page 5 to top of page 6). This statement is still not correct as Applicant cannot find the word "environmental" in Bae and Bae discloses nothing about environmental conditions or weather. Moreover, it would not be obvious to a person of ordinary skill in the art to modify Bae's alarm to be sent in response to environmental condition data because this would destroy Bae's intended function and principle of operation as Applicant pointed out in his previous responses.

The Examiner also asserts that it would have been obvious

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to send Bae's alarm over a free-space optical network "in order to eliminate the wire connection, reduce size, weight of device and make device is portable." (Office Action mailed 01/05/2004, page 6, lines 4-6). Applicant respectfully disagrees with this assertion. Specifically, the Examiner has not demonstrated a motivation or explained why a person of ordinary skill in the art would want to eliminate Bae's "wire connection". As Applicant pointed out in his previous responses Bae does not suggest anything about free-space optics or sending an alarm over a free-space network. In fact, the elimination of Bae's "wire connection" would change Bae's principle of operation, which means that a person of ordinary skill in the art would not make such a modification. Therefore, the rejections should be withdrawn.

New Claims 35 and 36

Applicant has added new independent claims 35 and 36 in the above amendment. Similar to amended claim 1, both of these new claims recite that the network data traffic is routed through a "non-wireless" alternate communication path. Therefore, Applicant submits that new independent claims 35 and 36 are allowable over Izadpanah et al. in view Wiedeman for the same reasons provided above for amended claim 1.

Fees Believed to be Due

Fees have previously been paid in this application for a total of 34 claims with 12 claims being independent claims. The above amendment results in there being a total of 32 claims with 13 claims being independent claims. Thus, a fee is believed to be due for 1 extra independent claim.

A Fee Transmittal is enclosed herewith to cover the fee for the additional claims, as well as the fee for the petition

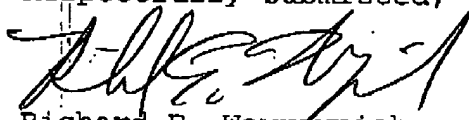
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for extension of time submitted herewith.

C O N C L U S I O N

In view of the above, Applicant submits that the pending claims are in condition for allowance. Should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone Richard E. Wawrzyniak at (858)552-1311 so that such issues may be resolved as expeditiously as possible.

Respectfully submitted,



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Dated

5/3/04

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